



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, LRE, MNDCT, MNRT (Tenant)
FFL, MNDCL, MNDL-S, MNRL, OPR (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed his application October 23, 2018 (the “Tenant’s Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 12, 2018 (the “10 Day Notice”);
- To suspend or set conditions on the Landlords’ right to enter the rental unit;
- For compensation for monetary loss or other money owed;
- To be paid back for the cost of emergency repairs made during the tenancy; and
- Reimbursement for the filing fee.

The Tenant submitted an amendment to the Tenant’s Application dated October 23, 2018 (the “Amendment”). The Amendment relates to the date the Tenant received the 10 Day Notice.

The Landlords filed their application October 29, 2018 (the “Landlords’ Application”). The Landlords applied as follows:

- For an Order of Possession based on the 10 Day Notice;
- To recover unpaid rent;
- For compensation for damage to the unit and to keep the pet or security deposit;
- For compensation for monetary loss or other money owed; and
- For reimbursement for the filing fee.

The Landlords appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlords and answered their questions in this regard. The Landlords provided affirmed testimony.

The Landlords confirmed the requests for compensation relate to damage to the rental unit. I advised the Landlords that these requests are premature as the Tenant has until the end of the tenancy to address the damage. I dismiss these requests with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the “*Act*”).

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence for the Landlords’ Application.

Landlord L.H. testified that the hearing package and evidence were sent by registered mail to the Tenant at the rental unit on October 31, 2018. She provided Tracking Number 1 as noted on the front page of this decision. With permission, I looked this up on the Canada Post website. The website shows the package was delivered and signed for November 1, 2018. The website says a signature image was recorded for online viewing, but the signature and name do not appear. The website then shows the item is out for delivery again.

I accept the undisputed testimony of Landlord L.H. in relation to service and find the Tenant was served with the hearing package and evidence in accordance with sections 59(3), 88(c) and 89(1)(c) of the *Act*. Based on the Canada Post website information, I accept that the package was delivered and signed for November 1, 2018.

I also note the Tenant would have been aware of the hearing as the Tenant’s Application was scheduled for the same date and time.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant.

I note that the only evidence submitted by the Tenant was the 10 Day Notice which I have considered.

Rule 7.3 of the Rules of Procedure states that an arbitrator can dismiss an Application for Dispute Resolution without leave to re-apply if a party fails to attend the hearing.

Given the Tenant did not appear for the hearing, I have no evidence before me as to the basis for the Tenant's Application. In the absence of evidence from the Tenant, the Tenant's Application is dismissed without leave to re-apply.

The Landlords were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and oral testimony of the Landlords. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession based on the 10 Day Notice?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords testified as follows in relation to a tenancy agreement. They purchased the property three years ago and the Tenant was already living at the rental unit. They assumed there was a verbal agreement between the previous owner and the Tenant. They had a discussion with the Tenant about the tenancy continuing as is and him continuing to pay \$1,200.00 per month. The Landlords were not sure when the Tenant moved into the rental unit. Landlord S.H. testified that the tenancy is a month-to-month tenancy and that rent continues to be \$1,200.00 per month. Landlord L.H. testified that rent is due on the first day of each month.

The 10 Day Notice states the Tenant failed to pay \$5,400.00 in rent due October 1, 2018. It is addressed to the Tenant and his partner and refers to the rental unit. It is signed and dated by the Landlords. It has an effective date of October 28, 2018.

Landlord S.H. testified that he served both pages of the 10 Day Notice on the Tenant in person at the rental unit on October 18, 2018. The Landlords submitted a Proof of Service signed by a witness supporting this.

The Landlords testified that the Tenant has not paid any rent since September 14, 2018, before the Notice was issued.

The Landlords provided an outline of the outstanding rent. The Landlords testified that not all of the outstanding rent from 2017 was included in the outline. The outline shows the following outstanding rent:

From 2017	\$600.00
February 2018	\$600.00
March 2018	\$600.00
April 2018	\$600.00
May 2018	\$600.00
June 2018	\$300.00
August 2018	\$500.00
September 2018	\$700.00
October 2018	\$1,200.00
November 2018	\$1,200.00
TOTAL	\$6,900.00

The Landlords also submitted a bank statement showing deposits into an account for this year. The deposits correspond with the outline of outstanding rent. Landlord L.H. testified that this account was for rent payments alone and that the Tenant's partner had the account number and made the deposits.

The Landlords testified that the Tenant did not have authority under the *Act* to withhold rent.

The Landlords confirmed \$6,900.00 in rent is currently outstanding and this is the amount they are requesting. The Landlords testified that further rent was outstanding from 2017 but they did not include this in their outline or request for unpaid rent.

Analysis

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy where a tenant has failed to pay rent. The relevant portions of section 46 state:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

...

Section 55(1) of the *Act* requires me to issue an Order of Possession when a tenant has disputed a notice to end tenancy and the application is dismissed or the notice is upheld. The notice must comply with section 52 of the *Act*.

Based on the undisputed testimony of the Landlords, and evidence submitted, I accept that the Tenant was obligated to pay \$1,200.00 in rent by the first day of each month. I accept the undisputed testimony of the Landlords that the Tenant did not have a right to withhold rent under the *Act*. Therefore, I find the Tenant was required to pay \$1,200.00 in rent by the first day of each month under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the undisputed testimony of the Landlords, and bank statement submitted, I accept the outline of unpaid rent provided and find the Tenant failed to pay the full rent amount for March, April, May, June, August, September and October of this year. I find that the outstanding rent amount for 2018 was \$5,100.00 and this was the amount due October 1, 2018. The Landlords agreed with this during the hearing.

Given the Tenant failed to pay rent as required, the Landlords were entitled to serve him with the 10 Day Notice pursuant to section 46(1) of the *Act*. Based on the undisputed testimony of Landlord S.H., and the Proof of Service, I find the Tenant was served with the 10 Day Notice in accordance with section 88(a) of the *Act*. Given the 10 Day Notice was served in person, I find the Tenant received it October 18, 2018. I also note the Tenant must have received the Notice as he disputed it and submitted it as evidence on the Tenant's Application.

The 10 Day Notice states that \$5,400.00 was due October 1, 2018. The Landlords testified that this was the unpaid rent for 2018 alone. I calculate the amount of outstanding rent to be \$5,100.00. The Landlords agreed with this during the hearing.

Section 68 of the *Act* allows me to amend a notice to end tenancy if the Tenant knew, or should have known, the information and it is reasonable in the circumstances to do so. I am satisfied the Tenant should have known the amount of rent outstanding as of October 1, 2018 given the nature of this information. Further, the amount noted on the 10 Day Notice is only \$300.00 more than what was outstanding for 2018 at the time. It is actually less than what would have been outstanding taking into account outstanding rent from 2017. I do not find the \$300.00 difference significant in these circumstances, particularly given the amount of rent outstanding. I find it is reasonable to amend the 10 Day Notice in the circumstances.

Upon a review of the 10 Day Notice, and considering the amendment, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the 10 Day Notice on October 18, 2018 to pay or dispute it under section 46(4) of the *Act*. I accept the undisputed testimony of the Landlords that the Tenant did not pay any of the outstanding rent after the 10 Day Notice was issued. The bank statement submitted supports that the Tenant did not pay any rent within five days from receipt of the 10 Day Notice.

The Tenant did dispute the Notice on October 23, 2018. However, the Tenant failed to appear at the hearing and provide a basis for disputing the 10 Day Notice and I have dismissed the Tenant's Application without leave to re-apply. Given I have dismissed the Tenant's Application and have found the 10 Day Notice complies with section 52 of the *Act*, the Landlords are entitled to an Order of Possession pursuant to section 55(1) of the *Act*.

I find the Landlords are entitled to an Order of Possession based on the 10 Day Notice and grant the Landlords this Order. The Order is effective two days after service on the Tenant.

I have accepted the outline of unpaid rent and find \$6,900.00 is currently outstanding. I find the Landlords are entitled to recover the \$6,900.00 in unpaid rent.

As the Landlords were successful in this application, I award the Landlords reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlords are entitled to monetary compensation in the amount of \$7,000.00. Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in this amount.

Conclusion

The Tenant's Application is dismissed without leave to re-apply.

The Landlords' requests for compensation are dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

The Landlords are granted an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlords are entitled to monetary compensation in the amount of \$7,000.00. I issue the Landlords a Monetary Order in this amount. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 29, 2018

Residential Tenancy Branch